

NOT FOR PUBLICATION

UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY

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UNITED STATES OF AMERICA,

Plaintiff,

v.

ALLEN TRAVERS,

Defendant.

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Criminal No.: 08-387 (JLL)

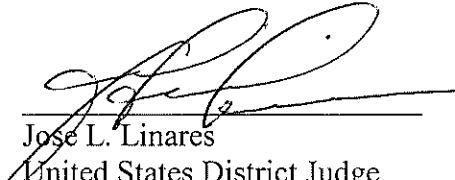
**ORDER**

**LINARES, District Judge.**

This matter comes before the Court on the March 9, 2009, motion to suppress of Defendant Allen Travers. A hearing was held by this Court on Defendant's motion from July 6 to July 8, 2009.

**IT IS** on this 21<sup>st</sup> day of July, 2009,

**ORDERED** that for the reasons set forth on the record today, a copy of the transcript of which is attached as Exhibit A to this Order, the motion to suppress [CM/ECF #16] of Defendant Allen Travers is DENIED.



Jose L. Linares  
United States District Judge

# EXHIBIT A

1 UNITED STATES DISTRICT COURT  
2 FOR THE DISTRICT OF NEW JERSEY  
3 Criminal No. 08-387(JLL)  
4

5 - - - - -X  
6 UNITED STATES OF AMERICA : TRANSCRIPT OF  
7 -vs- : PROCEEDINGS  
8 ALLEN TRAVERS a/k/a ROGER BANKS: OPINION  
9 a/k/a DONALD CARROLL, a/k/a : July 15, 2009  
10 RAYMOND GRIMES, :  
11 Defendant. :  
12 - - - - -X Newark, New Jersey

13  
14 B E F O R E:

15 THE HONORABLE JOSE L. LINARES,  
16 UNITED STATES DISTRICT COURT JUDGE  
17  
18  
19  
20

21 Pursuant to Section 753 Title 28 United States Code, the  
22 following transcript is certified to be an accurate record  
as taken stenographically in the above-entitled proceedings.  
s/Phyllis T. Lewis, CSR, CRR

23 - - - - -  
24 PHYLLIS T. LEWIS, C.S.R., C.R.R.  
Official Court Reporter - United States District Court  
P.O. Box 25588, Newark, New Jersey 07101  
25 (732) 735-4522

1 THE COURT: This is in the matter of United States  
2 versus Allen Travers, Criminal No. 08-387(JLL).

3 This matter comes before the Court on the  
4 suppression motion of Allen Travers filed on March 9th,  
5 2009. The Court has fully considered the submitted briefs,  
6 the testimony of the witnesses, and the evidence that was  
7 introduced at the suppression hearing, the Court held on  
8 July 7th and 8th, 2009. The Court has also considered the  
9 oral argument of counsel at the conclusion of the aforesaid  
10 hearing. This Court determines that the motion to suppress  
11 by the defendant Allen Travers should be denied.

12 At the suppression hearing, substantial testimony  
13 was offered concerning many matters, which are not  
14 necessarily material to the issues before this Court. One  
15 area of evidence and testimony submitted, however, seems  
16 uncontroverted. The uncontroverted facts indicate that on  
17 March 16th, 2008, Newark Police Officer Michael Grainger  
18 observed Allen Travers, the defendant in this case, walking  
19 on Dayton Street in Newark, New Jersey. There was some  
20 dispute as to whether there was an inconsistency in Officer  
21 Grainger's notes and his subsequent testimony with regard to  
22 the direction of travel by Allen Travers. However, it is  
23 undisputed by the evidence that the defendant was in fact  
24 walking on Dayton Street in Newark.

25 Travers then turned onto Whittier Place. Again,

1 this is not contested by any of the evidence presented, and  
2 in fact, it is buttressed by the testimony of Officer Kevin  
3 Wright who assisted on the stop.

4 Again uncontroverted is the fact that after Travers  
5 turned onto Whittier Place, Officer Grainger, now Detective  
6 Grainger, followed in his police car. This is something  
7 which is again buttressed by the evidence presented  
8 including the audio tapes, which indicate that Officer  
9 Grainger radioed for backup from another police officer  
10 whose vehicle was stationed at the other end of Whittier  
11 Place.

12 There was some inconsistency with regard to the  
13 direction of travel at the backup police vehicle, but again,  
14 this inconsistency is minor and what is undisputed is that  
15 the vehicle was at Whittier Place, that Officer Grainger in  
16 fact called for backup, and that that vehicle then proceeded  
17 to turn onto Whittier Place to assist on the stop.

18 It is also undisputed that the officer that was  
19 assisting Grainger on the stop drove part of the way up  
20 Whittier Place and exited his police car and began to  
21 approach Travers.

22 During the testimony of Officer Grainger at the  
23 hearing, it was brought out through cross-examination that  
24 Officer Grainger indicated in his police report that he had  
25 stopped the defendant because he fit the description of

1 someone involved in a shooting that occurred the previous  
2 evening. The Government produced evidence that in fact  
3 there was a shooting the previous evening, and the officer  
4 that was called as a witness by the defendant, Officer  
5 Hughes, indicated that he had in fact been provided with  
6 some information regarding the description of an alleged  
7 shooter, but cross-examination revealed that no police  
8 reports were ever written or reported with regard to the  
9 alleged description.

10 With regard to what transpired at the actual stop  
11 of the defendant, the testimony of Officer Grainger was that  
12 he directed Travers to remove his hand from his pocket, and  
13 Travers complied, and then he asked Travers where he lived.  
14 to which Travers replied that he lived on Leslie Street,  
15 which the officer knew to be quite a distance away from  
16 where the stop was occurring.

17 As Officer Wright was approaching, according to  
18 Grainger, Travers pushed Officer Grainger and attempted to  
19 flee.

20 The undisputed evidence shows that at the time of  
21 the stop, Travers was the subject of an arrest warrant  
22 issued by this Court on March 6th, 2008 and had been accused  
23 of violations of supervised release.

24 According to the testimony of the officers involved  
25 in the stop, as Travers attempted to flee, they then subdued

1 Travers during which time, as they were affecting the  
2 arrest, a gun was observed and removed from Travers'  
3 waistband. Travers was thereafter charged with a violation  
4 of possession of a firearm by a convicted felon. Cross  
5 examination brought out the fact that there were no charges  
6 filed against Travers for resisting arrest or attempting to  
7 flee.

8 The Court heard testimony from three Newark police  
9 officers in this matter, Officer Grainger, Officer Wright  
10 and Officer Hughes. Only Officer Grainger and Officer  
11 Wright testified as to the facts concerning the events of  
12 the actual arrest. Hughes' testimony was only limited as to  
13 conversations he had with Wright concerning the police  
14 response to a shooting at the Newark Seth Boyden Housing  
15 Complex the night before Travers' arrest and the alleged  
16 description of the alleged shooter.

17 This Court also had the benefit of listening to an  
18 audio recording of the Newark police radio activity that  
19 evening and received into evidence other documents  
20 concerning Travers' case, including other police reports.

21 The testimony of the officers is not completely  
22 consistent in all respects. For example, the police report  
23 does not as written coincide with Grainger's testimony about  
24 the direction of travel that Travers was walking on Dayton  
25 Street on the date of the arrest. Officer Wright also

1 failed to remember the date or the specific year on which  
2 Travers' arrest took place. Finally, when radioing for  
3 backup, Officer Grainger directed Wright to turn right on  
4 Whittier, although Wright testified that he in fact turned  
5 left onto Whittier.

6 The defense also challenges the credibility of  
7 Officer Hughes with regard to whether or not he in fact  
8 received a description of the shooter from the night before,  
9 in light of the fact that no police reports regarding this  
10 alleged description were ever written.

11 Nevertheless, notwithstanding said inconsistencies  
12 in the officers' testimony, the accounts of actual encounter  
13 with the defendant is consistent and credible in the opinion  
14 of this Court. The testimony of the officers was consistent  
15 and credible with regard to the location where Travers was  
16 stopped, where Officer Wright came from, and when he arrived  
17 at the scene.

18 It was consistent with regard to Travers attempting  
19 to flee, which is credible considering Travers' knowledge of  
20 the fact that he was in violation of probation and the  
21 subject of an arrest warrant. It is credible with regard to  
22 the fact that the officers upon Travers' flee attempt would  
23 apprehend him, and if the gun was in his waistband, that the  
24 gun would have been discovered during the arrest.

25 The testimony of the police officers is also



1 consistent with the radio transmission that this Court has  
2 heard and in large part is consistent with the police report  
3 that was prepared by Grainger at or near the time of the  
4 arrest.

5 The inconsistencies mentioned above are not of the  
6 type that would color the entire testimony of the police  
7 officers.

8 The Court also had the opportunity to observe the  
9 demeanor and manner of the officers as they testified  
10 regarding the acts surrounding the stop and the Court finds  
11 the officers to have been credible.

12 In examining all of this information in the light  
13 of the applicable legal standards, I find that the  
14 Government has demonstrated by a preponderance of the  
15 evidence that Travers, after having been stopped by Officer  
16 Grainger, pushed Grainger and attempted to flee. These  
17 actions by the defendant provided the officers with the  
18 requisite probable cause to arrest him and thus subsequently  
19 finding the gun and seizing same was legally appropriate as  
20 having been recovered during the search subsequent to the  
21 valid arrest.

22 The fact that Travers was not charged or that the  
23 officers did not choose to charge him with resisting arrest  
24 and/or assaulting a police officer, it does not render the  
25 officers' testimony with regard to the circumstances

1 surrounding the arrest not credible.

2 Travers is an individual who was already a  
3 convicted felon, who knew he had a warrant for his personal  
4 arrest and knew he was carrying a gun in violation of the  
5 terms of his supervised release.

6 It is therefore reasonable to believe that upon  
7 having been stopped for questioning by the police, knowing  
8 he had an arrest warrant and knowing that he had a gun in  
9 his possession, that he would attempt to flee, and that in  
10 that attempt he would push a police officer in order to  
11 effect his escape when a second officer had arrived, and it  
12 became apparent that he would have to identify himself.

13 It is also of note that Grainger's inquiry about  
14 his home address would likely have contributed to some level  
15 of apprehension on Travers' part.

16 Therefore, based on the totality of the evidence  
17 received and the totality of the circumstances, the Court  
18 finds that the arrest was not a violation of the Fourth  
19 Amendment, and that the seizure of the gun incident thereto  
20 was appropriate.

21 For all of the foregoing reasons, the defendant's  
22 motion to suppress is denied.

23  
24 \* \* \*  
25